

## PURCHASE ORDER TERMS AND CONDITIONS – GOODS

### 1. DEFINITIONS

In this Contract, unless the context otherwise requires:

**Delivery Point** means the delivery point set out in the Purchase Order;

**Goods** means the goods supplied by the Supplier to the Principal under this Contract, as described in the Purchase Order;

**Liabilities** means damages, claims, losses, liabilities, costs and expenses of any kind; and

**Supply** means the supply of Goods, and any ancillary services, by the Supplier under and in accordance with this Contract.

### 2. CONTRACT

#### 2.1 Formation

This Contract is formed when a Purchase Order has been issued to the Supplier in acceptance of a written quotation, tender, or offer to supply from the Supplier.

#### 2.2 Contract documents

This Contract consists of the following documents, to the exclusion of all terms and conditions contained in documentation provided by the Supplier, including delivery dockets:

- (a) Purchase Order;
- (b) these Purchase Order terms and conditions; and
- (c) any other attachments to the Purchase Order.

#### 2.3 Precedence

If there is any conflict or inconsistency between the documents constituting this Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2.

### 3. SUPPLY OF GOODS

#### 3.1 Standard of Goods

The Supplier must ensure that the Goods:

- (a) are new, unencumbered, of merchantable quality and free from defects;
- (b) meet the description and specifications set out in the Purchase Order and offer documents;
- (c) are suitably packed, marked and transported;
- (d) and any services supplied are fit for the purpose for which the Goods or services are required; and

- (e) any tools and equipment used on site by the Supplier or its personnel will be in safe working condition, will be compliance checked (if applicable), will comply with all laws and Australian Standards applicable to such tools and equipment, will be kept secure and fully insured, and will be operated by suitably qualified and competent persons, to the satisfaction of the Principal.

#### 3.2 Third party warranties

The Supplier must obtain all warranties relevant to the Goods from manufacturers or suppliers, including any warranties that are provided by any Subcontractor and ensure that the Principal has the benefit of those warranties.

#### 3.3 Records

- (a) The Supplier must maintain accurate records of the Supply, including the dates on which the Goods were supplied, and any services provided.
- (b) The Principal may inspect the records maintained under this clause 3.3 at any time upon reasonable notice.

#### 3.4 Safety Data Sheets

The Supplier must provide any Safety Data Sheets required by relevant laws.

### 4 DELIVERY

#### 4.1 Delivery Point

- (a) The Supplier will deliver the Goods to the Principal at the Delivery Point.
- (b) The Goods delivered to each Delivery Point must be delivered in good condition and without damage caused by delivery. The Supplier will replace any damaged Goods at no additional cost to the Principal.

#### 4.2 Delivery Documentation

The Supplier will provide detailed delivery dockets with every delivery, in duplicate. One delivery docket is to be packed with the Goods, the other is to be enclosed and attached to the outside of the consignment. Each delivery docket must contain as a minimum, the following information: the Principal's Purchase Order number (if any); description and quantity of Goods; and details of any items on back order.

#### 4.3 Cooperation with other suppliers

The Supplier must cooperate with and not unreasonably interfere with work or deliveries by other suppliers and the Principal's personnel at the site.

### 5 RISK AND TITLE

#### 5.1 Passing of Risk and Title

The Goods remain at the Supplier's risk and title will not pass to the Principal until the Goods are delivered to, inspected by, and accepted by, the Principal at the relevant Delivery Point.

## 5.2 PPSA Registration

The Principal will cooperate with the Supplier to enable the Supplier to register, under the *Personal Property Securities Act 2009* (Cth), the security interests of the Supplier in the Goods under the provisions of this Contract.

## 4. COMPLIANCE WITH LAWS

### 4.1 Permits and authorisations

At all times during the term, the Supplier and all relevant Supplier personnel must hold such permits, licences, authorisations and accreditations as may be required for the Supplier to perform its obligations under this Contract in compliance with all relevant laws.

### 4.2 Supply to comply

In performing its obligations under this Contract, the Supplier must comply at all times with:

- (a) the conditions of any permits, licences, authorisations and accreditations held by the Supplier in accordance with clause 4.1;
- (b) all laws applicable to the Supply, including modern slavery and heavy vehicle chain of responsibility legislation;
- (c) the Principal's site policies and rules; and
- (d) any Australian Standards applicable to the Supply.

## 5. DIRECTIONS

The Principal may give reasonable directions to the Supplier to deliver the Goods in a particular manner or at a particular time. The Supplier must make all reasonable efforts to comply with any such directions provided that the Supplier will be fairly compensated in the event that it incurs significant additional cost or delay as a consequence.

## 6. SUBCONTRACTORS

- (a) The Supplier must not engage any subcontractor to perform any part of the Supply without the Principal's prior approval (which may be conditional).
- (b) Approval by the Principal of any subcontractor and/or of any subcontract does not release the Supplier from any of its obligations under this Contract.

## 7. REMOVAL OF PERSONNEL FROM SITE

The Principal's representative may direct the Supplier to remove from the site any person employed in connection with the Supply who, in the reasonable opinion of the Principal's representative, is guilty of misconduct, is incompetent or negligent or who works in an unsafe manner.

## 8. INVOICING AND PAYMENT

### 8.1 Price schedule

The prices set out in the Purchase Order shall be the sole consideration payable to the Supplier under this Contract, and are deemed to include all risks, liabilities and obligations expressed or implied in this Contract or incurred in the course of the Supply.

### 8.2 Invoice

The Supplier will provide the Principal with a monthly tax invoice for the Supply during the relevant calendar month, setting out particulars of

the Supply and calculations by which the invoice was calculated.

### 8.3 Payment

The Principal will pay the Supplier within thirty days of receipt of invoice.

### 8.4 Disputed amounts

If the Principal disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Principal shall pay that portion of the amount stated in the invoice which is not in dispute and the Principal shall notify the Supplier in writing of the reasons for disputing the invoice.

### 8.5 Effect of payment

The making of any payment to the Supplier shall not be taken or construed as proof or admission of the Supply or any part thereof having been performed to the satisfaction of the Principal but shall be taken to be payment on account.

### 8.6 Taxes

Except as otherwise provided in this Contract, the Supplier shall pay any and all taxes, duties, excises, assessments and other government charges in connection with the Supply.

## 9. INSURANCE

### 9.1 Required insurance

The Supplier must, at its own cost, obtain and maintain the following insurances for the term:

- (a) General and product liability insurance for not less than \$20,000,000;
- (b) Goods in transit insurance for not less than the replacement value of the Goods;
- (c) Worker's compensation insurance;
- (d) Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Supply for not less than \$10,000,000; and
- (e) Compulsory third party motor vehicle insurance.

### 9.2 Evidence of insurance

The Supplier shall before commencing the Supply lodge with the Principal certificates of currency to evidence the existence of the policies required to be arranged by the Supplier and its subcontractors in respect of such insurance, and shall provide updated certificates of currency during the term.

## 10. INDEMNITIES

### 10.1 Indemnity

Subject to clause 10.2, the Supplier will indemnify (and will keep indemnified) the Principal and its personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Supplier or its personnel of any term or condition of this Contract; or
- (b) any negligent act or omission or wilful misconduct by the Supplier or its personnel arising out of the performance of this Contract.

### 10.2 Exclusions

The Supplier will not be liable under clause 10.1 to the extent that the Liability was directly caused by the Principal's negligence or wilful default.

## 11. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement at any time at its sole discretion by providing notice in writing to the other party.

## 12. CONSEQUENCES OF TERMINATION

### 12.1 Accrued rights

Termination of this Contract does not affect any accrued rights or remedies of either party.

### 12.2 Consequences

Subject to clause 12.1, the Supplier is not entitled to any compensation or damages on termination of this Contract.

### 12.3 Continuing clauses

Clauses 1, 10, 13, 14, 15, 17 and this clause 12 will continue to apply after termination of this Contract for any reason.

## 13. EXCLUSION OF CONSEQUENTIAL LOSS

- (a) Notwithstanding anything in this Contract (express or implied), in no circumstances whatsoever (including negligence) is a party entitled to recover from the other party any damages for business interruption or loss of actual or anticipated revenue, income or profits or any indirect, consequential, contingent or penal damages whatsoever arising out of, or in respect of, this Contract, with the exception of damages covered under a policy of insurance held by the other party, for which that party's liability shall be limited to the cover available under such insurance policy.
- (b) Each party releases the other party from, and indemnifies them and shall keep them indemnified from, any such liability.

## 14. CONFIDENTIALITY

Each party (**Recipient**) must keep confidential and may not use or disclose, except where required by legislation, any confidential information held by the other party and obtained by the Recipient during or in relation to the Supply save in relation to the Supply.

## 15. DISPUTE RESOLUTION

The parties acknowledge their expectation that any dispute, difference or claim arising out of or relating to this Contract will be settled by discussion and negotiation between the parties' representatives or senior management.

## 16. LOCAL COMMUNITIES

The Supplier acknowledges that the Principal seeks to share economic benefits with indigenous and local communities through business and employment relationships, and in performing this Contract the Supplier will seek to encourage opportunities to benefit indigenous people and local communities.

## 17. GENERAL

### 17.1 Time is of the essence

Time is of the essence in this Contract, and the Supplier must comply strictly with the date indicated on the Purchase Order for delivery of the Goods.

### 17.2 Entire understanding

This Contract comprises the entire agreement of the parties and supersedes all prior agreements,

negotiations and understandings between the parties, whether oral or written.

### 17.3 Supplier assignment

The Supplier must not assign, charge or encumber this Contract or any part thereof or any benefit, moneys, or interest under this Contract without the Principal's prior written consent.

### 17.4 Independent Contractor

The relationship between the Principal and the Supplier is a relationship of principal and independent contractor and nothing contained in this Contract shall be construed so as to create a relationship of employment, agency or partnership between the Principal and the Supplier, or between the Principal and any of the Supplier's personnel.

### 17.5 Governing law

- (a) This Contract is governed by and construed in accordance with the laws of the state where the relevant site is located and each party submits unconditionally to the non-exclusive jurisdiction of the courts of that state.
- (b) The *United Nations Convention on Contracts for the International Sale of Goods (1980)* does not apply to this Contract.

- EVN Goods PO T&Cs template dated 28 June 2019 -